

OLC #78-399/98

Collect/Sum

OGC 78-4851
25 July 1978

MEMORANDUM FOR : C/PCS/PGL
[redacted]
FROM : [redacted]
Assistant General Counsel
SUBJECT : S.2525

1. Attached is a copy of comments received recently from ICA (formerly USIA) regarding various provisions of Title I.

2. The effect would be to insulate ICA from CIA operations. These issues will be taken up shortly in the working group review of Title II and the views of DDO would be appreciated.

Att

cc: OLC [redacted]

The International Communication Agency proposes amendments to the following referenced sections of S. 2525:

I. Definitional Section

A. Definitions of "Intelligence Community" Now Include Routine ICA Activities

Sec. 104, p. 9, line 20

The ICA supports the six amendments to section 104 proposed by the Department of State to the National Foreign Intelligence Board on April 10, 1978 which would limit such definitions as "foreign intelligence" (p. 13, line 8) and "national intelligence" (p. 17, line 8) to activities conducted only by the "intelligence community" (defined at p. 13, line 17 et seq.). The ICA is not defined to be part of the intelligence community, unless a special determination by the President designates some of its components to be engaged in national intelligence activities. We favor these limitations because many routine activities of ICA, such as overseas research and correspondence with posts, will fall within the present definitions and therefore be subject to unnecessary and unintended regulation.

B. Expanding Definition of U.S. Media Organization
to Include V.O.A. and Other ICA Components

Sec. 104(30), p. 20, line 6
Recommended Amendment

Add the following sentence after the word "country"
in line 6: "Such term [U.S. media organization] includes
the International Communication Agency or a contractor
thereof while under contract to gather news."

Explanatory Note

This recommendation will specifically subject
V.O.A. correspondents and employees or occasional
stringers for the Office of Press and Publications
Service, ICA, to the restrictions imposed by Section
132(a)(3) (p. 51, line 18). Section 132(a)(3) prohibits
the intelligence community from paying or providing
other valuable consideration to an individual who is a
journalist, editor, or policy official of any United
States media organization to engage in intelligence
activities. The intention has developed to treat those in
ICA in a news-gathering and reporting function as if they
worked in the private sector. Thus, we believe this amend-
ment is necessary because the definition of "United States
media organization" could be interpreted to exclude the
ICA and its contractors.

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II. Scope of Authority of Director of National Intelligence
Over ICA Records

Sec. 114(p), pp. 33-34

Recommended Amendment

Insert the words "in the intelligence community"
after the word "agency" in lines 1 and 2 on page 34.

Explanatory Note

This section grants to the Director of National Intelligence broad authority to obtain information from any department or agency for the purpose of conducting program and performance audits and evaluations of the entities of the intelligence community. Most materials, such as those that are published by ICA, could be routinely supplied pursuant to agreements, but we believe that requests for other types of information should be submitted by the Director of National Intelligence to the head of an agency for a determination concerning release in order to insure the integrity of the ICA's cultural, educational, and information programs.

III. Specifically Insulating Certain ICA Programs

Sec. 132, p. 50, line 17

Section 132 of the bill restricts the use of described categories of individuals for specified intelligence activities. This section is of direct interest to ICA because among the categories are "United States persons" participating in exchange programs and persons involved with any "United States media organization." A number of amendments are proposed by the ICA to this section and they are listed for your reference after a marked version of the section of the bill.

Incorporating all the proposed amendments, Section 132

(a)(2) reads as follows (lines 1-17, page 51):

"Sec. 132. (a) No entity of the intelligence community may--

. . .

(2) pay or provide other valuable consideration to or offer other inducement to any person (A) participating in a program sponsored or supported by the United States Government designed to promote education or culture through international exchanges or (B) under contract to the United States Government to do research abroad related to the activities of the International Communication

Agency to--

(i) engage in any intelligence activity for or on behalf of the United States, or

(ii) provide any intelligence information to any department or agency; "

A marked version of the section with lettered footnotes keyed to explanations for the proposed amendments is included for your reference. The proposed deletions are bracketed and proposed language is underlined.

Sec. 132. (a) No entity of the intelligence community may--

(2) pay or provide other valuable consideration to ^Aor offer other inducement to any ^B[United States] person ^C[whose travel to a foreign country is] ^Aparticipating in ^Da program sponsored [and] or supported by the United States ^EGovernment ^F[as part of a United States Government program] designed to promote education or [the arts, humanities, or cultural affairs] ^Gculture through international exchanges or ^K(B) under contract to the United States Government to do research abroad related to the activities of the International Communication Agency to--

[(A)] (i) engage in any intelligence activity for
or on behalf of the United States, ^H or [while such
individual is --

- ^I (i) participating in any such program, and
- ^J (ii) traveling or temporarily residing in any
foreign country;]

[(B)] (ii) provide any intelligence information ^H to
any department or agency; [acquired while such individual
was --

- ^I (i) participating in any such program, and
- ^J (ii) traveling or temporarily residing in any
foreign country;]

Explanatory Note

Amendment "A" broadens the prohibition to include
attempts by the intelligence community to solicit the
cooperation of participants in exchange programs by
appealing to certain philosophical or religious beliefs of
the individuals.

Amendments "B," "C," "H," "I," and "J" are
recommended to prohibit the intelligence community from
initiating contact with nationals of other countries who are

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participating in U.S. Government sponsored educational or cultural exchange programs in the United States to insure the integrity of the programs. The deletions of phrases in lines 8 and 13 ("H") are necessary changes of syntax because of the deletions of 2(A)(ii) and 2(B)(ii).

Amendments "D, " "E, " and "F" expand the scope of prohibition to exchange programs sponsored or supported by the United States Government. We also recommend that the legislative history establish the meaning of "sponsor" to include "J" visa approval or some other kind of equally obvious facilitative assistance.

Amendment "G" is recommended in order to include within the prohibition all facets of the exchange programs such as in the fields of science and technology, or athletics. These fields would be covered by the general terms "education" and "culture."

Amendment "K" places research contractors on a par with participants in educational and cultural exchange programs in order to insure the integrity of their work product.

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IV. Provisions Permit Involvement in Recruitment for
the Intelligence Community

Sec. 132(f), p. 54, line 20

Recommended Amendment

Delete the words "or assisting in" found at line 22.

Explanatory Note

This section permits the categories of persons listed previously in subsections (a) and (b), such as exchange program participants, to "recommend" or "assist" in the recruitment of employees, sources of information, or sources of operational assistance for any entity of the intelligence community.

We believe that while program participants should not be engaged in assisting the intelligence community with the activities enumerated in subsection (f), they should not be prohibited from merely making recommendations relating to these activities.

V. Provisions Relating to the Use of ICA As Cover

Sec. 132(a)(6), p. 53, lines 5 and 6

Recommended Amendments

Insert the words "The International Communication Agency, " after "Peace Corps" in line 5.

Delete the words ", the arts, humanities, or "cultural affairs" and substitute "culture through international exchanges" in line 6.

Explanatory Note

The insertion of "The International Communication Agency" is to make explicit that ICA is not to be used as cover. The change in line 6 is recommended to maintain consistency with the recommended changes for Section 132(a)(2) at page 51, line 5.